IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M. No. 7479-C of 2004 and
R.S.A. No. 3089 of 2004

Date of Decision: 7.8.2006

Som Pal and others

...Appellants.

Versus

Gulshan Kumar alias Gulshan Raj Singh and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Ramesh Sharma, Advocate for the appellants.

Mr. C.B.Goel, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

C.M. No. 7479-C of 2004

For the reasons stated in the application, delay of 119 days in refiling the appeal is condoned. CM stands disposed of accordingly.

RSA No. 3089 of 2004

This regular second appeal filed by the defendants arises from a suit for specific performance of an agreement to sell dated 23.4.1993 in respect of suit land as detailed in the head note of the plaint.

The case of the plaintiffs is that defendants No.1 to 3, owner of the land, entered into an agreement of sale of land measuring 20 bighas 18 biswas out of the land for a consideration of Rs.89,000/- per acre vide agreement to sell dated 23.4.1993. It was pleaded that a sum of Rs.2 lacs was paid as an earnest money and that the possession of the aforesaid land was delivered to plaintiffs no.1 and 2 who have come in actual physical and

cultivating possession of the suit land. The last date for execution of sale deed was fixed at 15.6.1994. It was further pleaded that defendants No.4, 5 and 6 sons of defendant No.1 and brothers of defendants No.2 and 3 have failed to get the sale deed executed and registered on receiving the remaining amount rather mortgaged the property with various persons and various banks/khadi Boards. It was further pleaded that the plaintiffs were always ready and willing to get the sale deed executed in their favour in terms of agreement to sell dated 23.4.1993.

Upon notice, the defendants filed written statement by controverting the averments made in the plaint. It was admitted that the defendants were owners of the suit land but the execution of the alleged agreement in favour of the plaintiffs was denied. The other averments made in the plaint were also denied.

On the pleadings of the parties, the following issues were framed by the trial court:-

"1. Whether defendants No.1, 2 and 3 had agreed to sell 20-B/18-B land to the suit land vide agreement to sell dated 23.4.93? OPP
2. Whether the defendants No.1 to 3 had received Rs.2 lacs as earnest money? OPP
3. Whether the plaintiff was willing and is still ready to perform his part of agreement? OPP
4. Whether the suit is bad for mis-joinder of the necessary parties? OPD
5. Relief."

The trial court took issues No.1 to 3 together being inter linked and by appreciating the evidence led by the parties came to the conclusion that defendants No.1 to 3 had agreed to sell the land measuring 20 bighas

18 biswas vide agreement to sell dated 23.4.1993 and had received an amount of Rs.2 lacs as earnest money and that the plaintiffs were ready and willing to perform their part of agreement. On the basis of the aforesaid finding, the trial court decreed the suit filed by the plaintiffs vide judgment and decree dated 22.12.2001. On appeal, the lower appellate court upheld the findings recorded by the trial court and dismissed the appeal vide judgment and decree dated 17.11.2003.

Learned counsel for the appellants submits that even the agreement Ex.P1 was not signed by the sons of Kehar Singh. He further submits that courts below have misread the evidence led by the parties and wrongly recorded the findings in favour of the plaintiffs. On the other hand, learned counsel for the respondents supported the findings recorded by the courts below.

I have heard learned counsel for the parties and perused the record carefully.

The counsel for the appellant made efforts for reappreciation of evidence without pin pointing any misreading of evidence or illegality or perversity in the concurrent findings recorded by the courts below warranting interference by this Court in this regular second appeal. No question of law, much less a substantial question of law arises in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

August 7, 2006 **(AJAY KUMAR MITTAL)**
gbs **JUDGE**